

Judge: Thomas T. Glover
Chapter: 13
Hearing Date: June 23, 2010
Hearing Time: 9:30 a.m.
Hearing Location:
Marysville Municipal Court
1015 State Ave. Courtroom 1
Marysville, WA 98270
Response Date: June 16, 2010

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re:

CHARLIE J BERLIN,

Debtor(s).

IN CHAPTER 13 PROCEEDING
NO. 09-20305-TTG

OBJECTION TO EXEMPTIONS

K. Michael Fitzgerald, Chapter 13 Trustee, by and through the undersigned, hereby objects to the exemptions filed by the above-named debtor, on the following grounds:

The debtor filed the above-numbered case on October 2, 2009. On January 22, 2010, the Court confirmed a plan dated November 19, 2009, providing for payments of \$82.00 per month plus income tax refunds for a thirty-six month commitment period.

On May 3, 2010, the Court entered an order denying debtor's motion to modify his plan and receive a discharge. The debtor has moved for reconsideration of that order.

The debtor has now filed an amended Schedule B listing tax refunds from 2009 through 2012 with an "unknown" value, and an amended Schedule C claiming an exemption of \$11,975.00 under 11 U.S.C. §522(d)(5). The debtor claimed state exemption in his original schedules, but now claims an exemption under the federal statutory scheme. This the debtor cannot do. The debtor may use either state or federal exemptions, but not both. 11 U.S.C. §522(b)(1). Furthermore, the maximum amount available to the debtor under 11 U.S.C. §522(d)(5) would have been \$11,200.00.

Moreover, the Trustee objects to the amended schedule C because it is an attempt to avoid the debtor's obligations under the confirmed plan. The debtor is committed to tender his

OBJECTION TO EXEMPTIONS - 1

Chapter 13 Trustee
600 University St. #2200
Seattle, WA 98101-4100
(206) 624-5124 FAX 624-5282

1 tax refunds to the Trustee and, in addition, may not exempt post-petition refunds. The debtor is
2 bound by the confirmed plan. 11 U.S.C. § 1327(a).

3 Furthermore, the Trustee asserts the following additional objections to debtor's
4 exemptions:

5 1. To the extent that debtor is attempting to claim an exemption in excess of the value
6 permitted by federal or state law, the Trustee objects to the assertion of such exemptions.

7 2. To the extent that the debtor is attempting to claim an exemption for property which is
8 not permitted under federal or state law, or for property that has been concealed by the debtor,
9 the Trustee objects to the assertion of such exemptions.

10 3. To the extent that the actual value of an asset exceeds the valuation of the asset by the
11 debtor, the Trustee objects to the claim of any exemption in that property.

12 The Trustee reserves the right to assert any other basis for his objection or to otherwise
13 supplement or amend this objection at a later date. A proposed order is filed with the objection.

14 WHEREFORE, the Trustee requests that the Court enter an order disallowing the debtor's
15 exemptions as stated above.

16 Dated this 18th day of May, 2010

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18 /s/ Jason Wilson-Aguilar, WSBA #33582 for
19 K. MICHAEL FITZGERALD
20 Chapter 13 Trustee
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